

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

**ULLICO CASUALTY COMPANY and
PATRIOT NATIONAL INSURANCE GROUP,
INC.,**

Plaintiffs,

v.

Case No. 12-C-1031

**MATTHIESEN, WICKERT and LEHRER, S.C.,
Defendant.**

DECISION AND ORDER

Currently before me are the following motions: plaintiffs' motion for a preliminary injunction, defendant's motion to stay this case on abstention grounds, and defendant's motion to dismiss the second count of the complaint for failure to state a claim upon which relief can be granted. It appears that, while the parties were briefing these motions, certain events transpired that makes it unnecessary for me to decide the motions at this time. First, the defendant represented to the court that it has no intention of disbursing the disputed funds from its trust account unless a court orders it to do so or its dispute with the plaintiffs is resolved. See Aff. of Gary Wickert ¶ 36. Thus, plaintiffs no longer have a need for an order enjoining the defendant from transferring funds out of its trust account. Second, the Texas state-court litigation has been removed to federal court in Texas, and the defendant agrees that so long as the Texas litigation remains in federal court, I cannot abstain from exercising jurisdiction in this case. See Def.'s Reply Br. at 2. Accordingly, I will deny the motion for preliminary injunction and motion for abstention without prejudice. Because the motion to dismiss is intertwined with the motion for abstention, it will also be

denied without prejudice. The parties may refile any these motions if the need arises—i.e., if the defendant threatens to transfer the disputed funds from its trust account or the Texas litigation is remanded to state court.

Accordingly, **IT IS ORDERED** that plaintiffs' motion for a preliminary injunction is **DENIED WITHOUT PREJUDICE**.

IT IS FURTHER ORDERED that defendant's motion to stay this case on abstention grounds is **DENIED WITHOUT PREJUDICE**.

FINALLY, IT IS ORDERED that defendant's motion to dismiss the second count of the complaint is **DENIED WITHOUT PREJUDICE**.

Dated at Milwaukee, Wisconsin, this 23rd day of January, 2013.

s/ Lynn Adelman

LYNN ADELMAN
District Judge